Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1098

HARRIET PARK, JOHN SILVERNALE, ELEANOR DOERSAM, LESLIE STEEN, JAMES KAISER, CATHERINE G. SMITH, ADELAIDE CONVERSE and J. E. HAYES,
Petitioners,
v
LANSING SCHOOL DISTRICT and BOARD OF EDUCATION OF LANSING SCHOOL DISTRICT and THOMAS C. WALSH,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

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IN THE

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

Petitioners pray that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of Michigan entered in the above entitled cause June 27, 1975.

CITATIONS TO OPINIONS BELOW

The opinion of the trial court is unreported and is printed in Appendix A hereto, *infra* p. 15. The opinion of the Court of Appeals, printed in Appendix A hereto, *infra* p. 21, is reported in 62 Mich App 397.

JURISDICTION

The judgment of the Court of Appeals was entered June 27, 1975. A Timely Application for Rehearing was denied August 11, 1975. A Timely Application for Leave to Appeal to the Supreme Court of the State of Michigan was denied November 5, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3) since the validity of a state statute on grounds of repugnancy to the Constitution of the United States is drawn in question.

QUESTION PRESENTED

Is Policy Rule No. 4116.5 of the Lansing School District, the purpose of which is to improve the attitude of administrators toward the school community and of the public toward administrators and the school district by requiring administrators to live in the district, void as a denial of equal protection of the laws contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States because there is an exception to the residency requirement based on time of appointment to the administrative position?

CONSTITUTIONAL PROVISION INVOLVED

Constitution of United States

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This suit was commenced April 24, 1970 to obtain an injunction restraining the Lansing School District and the Board of Education of Lansing School District from enforcing their Policy Rule No. 4116.5 which provides:

> "*Location of Residence of Administrative Personnel* Professional personnel holding administrative positions in the Lansing School District shall reside within the school district.
>
> A professional staff member who now holds an administrative position and resides outside of the Lansing School District shall establish residence in Lansing School District not later than July 1, 1970, or his or her appointment will be terminated, except that this provision shall not apply to per-

sons who held an administrative position prior to July 1, 1962, and have continuously resided outside of the district since July 1, 1962.

The holder of an administrative position who moves his residence from within the Lansing School District shall have automaticallly terminated his appointment.

The appointment of a professional staff member who resides outside of the Lansing School District to an administrative position or promotion of such staff member to another administrative position shall be temporary and shall be terminated if such professional staff member does not establish residence in the Lansing School District within one year from the date of appointment."

Petitioners challenged the rule alleging that "Said rule violates Article I of the Michigan Constitution of 1963 and the 14th Amendment to the United States Constitution for the reason it is arbitrary and unreasonable and deprives those holding administrative positions with defendant school district of their rights without due process of law and for the further reason that the rule constitutes invalid class legislation and denies to those holding administrative positions with defendant school district equal protection of the law." (Complaint, paragraph 7)

The matter was submitted to the Trial Court for determination upon an agreed statement of facts. The opinion of the Trial Court was filed June 30, 1970. The Court said in part:

> "The Court is of the opinion that there is nothing unreasonable, arbitrary, or capricious in the requirement that administrative personnel shall live

> within the school district. Apparently, the School Board feels that it would be beneficial to the school district to have its administrative personnel live within said district. The Court cannot quarrel with their view."

An order dissolving a restraining order previously enterd and dismissing the complaint was entered August 4, 1970.

Petitioners appealed the dismissal of their complaint to the Court of Appeals. (*Park* v *Lansing Board of Education, Docket* No. 10083, 32 Michigan Appeals 752 (1971)). One of the questions raised for decision in petitioners' brief pursuant to Michigan Court Rules was as follows:

> "Does a Policy Rule of a School District, Adopted on or About July 17, 1969, Which Requires all Persons Holding Administrative Positions to Reside Within the School District Except Those Who Held Administrative Positions Prior to July 1, 1962 and Who Have Continuously Resided Out of the District Since That Date Constitute a Denial of Equal Protection to Those Appointed Subsequent to July 1, 1962?"

The Court found no violation of substantive due process. It observed that the trial judge did not rule on the claim of denial of equal protection. The opinion of the Court stated:

> "Reversed and remanded for factual findings and conclusions of law on the question of whether or not the cut-off date of July 1, 1962 bears some reasonable relation to the intended purpose of the residence policy rule. An affirmative finding will support the validity of the rule. If the finding is nega-

tive, the rule is invalid. *Beauty Built Construction Corporation, supra.* We do not retain jurisdiction." p. 755

The case came on for trial on May 22, 1974. In addition to the original Stipulation of Facts, there was presented to the Trial Court undenied Requests for Admissions, Answers to Interrogatories to Defendant School District (admitted in evidence T 95, 96)* and testimony of various witnesses.

All of the petitioners were and are, with the exception of John Silvernale, professional personnel holding administrative positions in the Lansing School District within the meaning of the rule; John Silvernale is a professional person within the meaning of said policy rule. All were appointed to administrative positions subsequent to July 1, 1962 and all lived outside the Lansing School District at the time the rule was adopted in 1969.

It was admitted that at least five professional personnel holding administrative positions reside outside the School District protected or exempted from the rule by the July 1, 1962 "grandfather clause."

The purpose of the residency rule, as set forth in the Answers to Interrogatories filed by respondent School District and admitted in evidence is as follows:

> "There are two basic purposes causing Policy 4116.5 to be established by the Board of Education; (a) Professional personnel who are administrators in this school district hold by virtue of being administrators, a leadership role in this community;

* References designed "T" refer to pages in the transcript of testimony.

> (b) Citizens of the school district are frequently asked to support local school tax issues and, consequently expect administrators who advocate passage of these issues to be subject to the taxpayers best fulfill their administrative role. (Enclosures: extracts from Board minutes for July 1 and 17, 1969.)"

In the attached minutes of the Board dated July 1, 1969 the following appears:

> "Mr. Walsh then explained that this policy is an attempt to put into writing an informal policy the Board agreed upon some years ago. He further explained that administrators living outside of the district when they advocate such action as increasing millage but do not live in the district to share the taxes they are advocating."

In the attached minutes of the Board dated July 17, 1969 the following appears:

> "Mr. Walsh reviewed the history leading to the development of the written policy and reasons for its adoption, including the necessity for administrators to work on millage elections and advocate local taxes.
>
> Mrs. Boucher commented that urban societies have problems of the flight to the suburbs. She felt that a person who accepts an administrative position should live in the district; be involved in the total life of the district and share this involvement with those he represents as an administrator. She said she felt this was one of the major problems in urban communities today—the people of the commun-

ity feel that the administrator is not sensitive to their problems because he is not sufficiently involved."

Respondents admitted by virtue of undenied requests for admissions that purposes of the rule were as follows:

> "That there are two basic purposes to Policy Rule No. 4116.5: one is that professional personnel who are administrators in the school district will be better employees of the school district if they reside in the district; the other is that citizens of the school district are frequently asked to support local school tax issues and consequently expect professional personnel who are administrators, who by virtue of their position hold a leadership role in the community, and who advocate passage of these issues to be subject to the same tax burden as the citizens."

In the Answers to Interrogatories the respondent School District explained the reason for the exemption granted to persons appointed prior to July 1, 1962:

> "As the policy making body for the school district, the Board of Education directed the Superintendent as of July 1, 1962 to make no recommendations for appointments of professional administrators unless said administrators had previously agreed as a condition of the promotion and employment to move within the school district if they resided outside of the school district."

The factual question in this case was whether all professional personnel appointed to administrative positions after July 1, 1962 agreed to move within the School District.

The opinion of the trial court was filed June 27, 1974; in the opinion it is stated that "This Court finds as a matter of law that the cut-off date July 1, 1962, does bear reasonable relations to the intended purpose of the resident policy rule." (Appendix A, *infra* p. 21). An order in conformity with this opinion was entered July 11, 1974.

Petitioners again appealed to the Michigan Court of Appeals stating as one of the questions for decision:

> "Is Policy Rule No. 4116.5 of the Lansing School District, the purpose of which is to improve the attitude of administrators toward the school community and of the public toward administrators and the school district by requiring administrators to live in the district, void as a denial of equal protection of the laws contrary to Article 1, §1, 2 Michigan Constitution (1963) and the Fourteenth Amendment of the Federal Constitution because there is an exception to the residency requirement based on time of appointment to the administrative position?"

The Court of Appeals rendered its opinion and judgment on June 27, 1975, affirming the trial court and stating:

> "We are unwilling to say that the rule's cut-off date is wholly without supporting reason."

(Appendix A, *infra* p. 23).

On July 15, 1975, petitioners filed an Application for Rehearing which was denied by an Order dated August 11, 1975. (Appendix A, *infra* p. 24).

On August 26, 1975, petitioners filed an Application for Leave to Appeal to the Supreme Court of the State of Michigan. Application for Leave to Appeal was denied by an Order dated November 5, 1975. (Appendix A, p. 25).

REASONS FOR GRANTING WRIT

It is the position of the petitioners that Policy Rule 4116.5 violates equal protection for want of a proper classification; that the exception to the requirement that all administrators reside within the school district does not bear a reasonable relationship to the object of the rule.

The purpose of Policy Rule 4116.5 is clear. It is to have more dedicated employees who are an integral part of the community, to avoid embarrassment to the school district in millage campaigns, to preserve the image of school administrators as community leaders and similar purposes all having to do with the attitude of the administrators toward the school community and the attitude of the public toward the administrators and the school district.

As previously stated, the issue is whether there is a reasonable relationship between the rule and the exception. It is the position of the petitioners that the exception rests on grounds wholly irrelevant to the achievement of the school board's objectives. If living in a school district fosters dedication and a better and more wholesome relationship between the Board of Education and the community, then the date of an administrator's appointment has no relationship to the purpose of the rule. There is no reason, related to the purpose of the rule, to permit those hired prior to July 1, 1962 to live outside the district and to require those hired after that date to reside within the district. It has not been shown, nor does the Board of Education even argue, that community attitudes will depend on when an administrator is hired. If a non-resident administrator will cause embarrassment during a millage election, the date of the administrator's hire will not lessen the embarrassment.

There is no reasonable relationship between the rule requiring administrators to live within the school district and the exception permitting outside residence for those administrators hired prior to July 1, 1962. The Board of Education has established a class within a class, without reasonable grounds for making the distinction. The classification is not "reasonable in light of its purpose." *McLaughlin v State of Florida,* 379 US 184, 191 (1964).

A classification must always rest upon "some differences which bears a just and proper relation" to a legitimate governmental goal. *Gulf C & SFR Co. v Ellis,* 165 US 150, 165 (1897). While it is not necessary that all individuals be dealt with in an identical fashion, nevertheless, the equal protection clause "does require that a distinction made has some relevance to the purpose for which the classification is made." *Baxstrom v Herold,* 383 US 107, 111 (1969); *Walters v City of St. Louis,* 347 US 231 (1954); *Rinaldi v Yeager,* 384 US 305 (1966). In the present matter the distinction made has no relevance to the purpose for which the classification was made.

The reason for the exception contained in Policy Rule 4116.5 is clear. In July of 1962 the Board of Education adopted an informal policy requiring newly hired administrators to live within the district. When Policy Rule 416.5 was promulgated in July of 1969 the Board of Education did not think it fair to require those individuals hired prior to the adoption of the July 1962 informal rule to move into the district.

The exception that is the focal point of this lawsuit is not reasonably related to the purpose giving rise to the enactment of the rule. The Board of Education does not argue that it is so related. The Michigan Court of Appeals, in upholding the constitutionality of the rule, concluded that it would probably "further the intended purpose of

the rule" if those administrators within the rule's exception were required to reside within the district. (Appendix A, *infra* p. 23). The Court of Appeals concluded, in effect, that since the exception was based on good motives and a desire on the part of the school board to be fair, that any constitutional infirmity could be overlooked.

It is the position of the petitioners that good motives, however well intended, cannot be substituted for constitutional compliance. The equal protection clause requires that an exception such as the one contained in Rule 4116.5 have "some relevance to the purpose for which the classification is made." *Baxstrom v Herold, supra.* The exception contained in Rule 4116.5 has no such relevance. Good motives cannot cure the rule's defect.

There are in excess of ten million men and women employed by state and local governments. A substantial number of these public employees are required, as a condition of their employment, to live within certain defined boundaries. As a result, there have been numerous court challenges dealing with the validity of such requirements. The courts have generally upheld the right of public employers to adopt and enforce residency requirements. In *DPOA v City of Detroit,* 385 Mich 519 (1971), appeal dismissed for want of a substantial federal question, 405 US 950 (1972), the Michigan Supreme Court upheld the constitutionality of a City of Detroit Ordinance requiring city employees to live within the City of Detroit. An appeal was then taken to this Court which was dismissed for want of a substantial federal question. Other courts have relied on the *DPOA v City of Detroit, supra,* dismissal as a decision on the merits. In *Ahern v Murphy,* 457 F2d 363 (7th Cir. 1972), plaintiff challenged the constitutionality of a residency requirement for city employees. The requirement was found in

the Chicago Municipal Code and Rule 24 of the Police Department Rules and Regulations which required policemen to reside within the corporate boundaries of the City of Chicago. On plaintiff's appeal from a dismissal of his case by the District Court, the Seventh Circuit noted that this Court had just (457 F2d at 364):

> "dismissed an appeal from the decision of the Supreme Court of Michigan in Detroit Police Officers Ass'n v City of Detroit, 385 Mich 519, • • • (1971), 'for want of a substantial federal question.' 405 US 950, • • • . The Michigan Supreme Court had held that a Detroit ordinance similar to the Chicago ordinance did not violate the equal protection clause of the Fourteenth Amendment."

The Seventh Circuit held (457 F2d at 364):

> "Although it is well established that the denial of a petition for writ of certiorari by the Supreme Court carries no precedential weight whatever, • • • *the dismissal of an appeal for want of a substantial federal question stands on an entirely different basis. It is a decision on the merits of the case appealed.*" [Emphasis added]

On that basis, the Seventh Circuit found that this Court's dismissal of the Michigan appeal was not merely persuasive, but, in fact, dispositive of the matter before it and affirmed the lower Court's dismissal.

This Court, by its dismissal of *DPOA v City of Detroit, supra,* has upheld the right of public employers to adopt and enforce residency requirements. The constitutionality of such a requirement, therefore, is no longer an issue. The manner in which such requirements are enforced, however,

is a subject of substantial disagreement and will affect a large number of the ten million men and women employed by state and local units of government. In particular, the conditions under which a "grandfather clause" may be imposed are of vital concern to public employers and employees throughout the country. The issues raised by the present lawsuit are in no way unique or limited to the present parties. They transcend the Lansing Board of Education and its employees and have a direct impact on all public employees.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

— — —

OPINION

(State of Michigan—Circuit Court—County of Ingham)

(Filed June 30, 1970)

Harriet Park, John Silvernale, Eleanor Doersam, Leslie Steen, James Kaiser, Marguerite Sprague, Catherine G. Smith, Adelaide Converse, Plaintiffs, —vs— Lansing School District and Board of Education of Lansing School District, Defendants, and Thomas C. Walsh, Intervening Defendant.	No. 11623-C

This matter having come on to be heard on May 22, 1974, the Court having heard the testimony of the following witnesses: Eleanor Doersam, J. E. Hayes, Harriet Park, John Silvernale, Catherine Smith, Leslie Steen, Jr., Deward A. Clark, Thomas C. Walsh, John D. Marrs, I. Carl Candoli; the Court being advised in the premises and having heard all the arguments of attorneys Nancy Jean Van Lopik and Gordon Gregory, for Plaintiffs, Stuart J. Dunnings, Jr., for Lansing School District, and Thomas C. Walsh, Intervening Defendant.

This case is being retried on a remand from the Court of Appeals, Docket No. 10083, where this Court received the following instructions:

> "Reversed and remanded for factual findings and conclusions of law on the question of whether or not the cut off date of July 1, 1962, bears some reasonable relation to the intended purpose of the resident policy rule. An affirmative finding will support the validity of the rule. If the finding is negative, the rule is invalid."

Since this case was remanded it has come to the attention of this Court that the case of *Williams* v *Detroit Civil Service Commission,* 383 Mich 507 deals with a similar problem. This case held that the Detroit Civil Service Commission did not exceed its powers or act unlawfully by promulgating a general residence requirement for employees of that city. The case further held that there is no constitutional right to be employed by a municipality while living elsewhere. The case further indicates that the question of whether or make residence within a municipality a condition of public employment is one which must be largely addressed to the legislative branch of government and whether such a requirement is reasonable and valid depends upon the circumstances. There is no violation, according to this case, of due process being violated by such a rule. The plaintiffs urged that the equal protection clause is violated by such a rule. The Judge in the *Willams* case, *supra,* ruled that there was a legitimate goal of the Civil Service Commission in requiring residence within the city since it could be fairly debated that there would provide a tendency for city residents to feel special incentives to good performance in city employment, not experienced by non-residents. It can logically be argued that such a rule which is applied equally to the same class of employees does not offend the equal protection clause of the State Constitution or the Constitution of the United States.

In this case the facts are as follows: That the Lansing School District Board of Education promulgated an unofficial policy effective July 1, 1962, that all administrative personnel must live within the territorial limits of the Lansing School District. This was reduced to writing and made a part of the Board minutes on July 17, 1969. During the period from 1962 through 1969, unrefuted testimony indicates that the Personnel Department in charge of Deward A. Clark made consistent efforts in insuring that the informal policy with the cut off date of July 1, 1962, was adhered to. He did this by informing prospective candidates for appointment to administrative posts or being considered for up-grading to a higher administrative post that they must move or already live within the territory of the Lansing School District. Along with advising individuals in interviews of the informal policy of the Board, this information was also relayed to the elementary principals in their monthly meetings and to the secondary groups of administrators at their meetings all during the early 1960s. The informal policy was not reduced to writing, was not mentioned in the posting of administrative vacancies and was only mentioned during the interviews with the individuals seeking that position. Finally the president of the elementary principals in the late 1960s asked that the rule be reduced to writing and the Board complied with this request on July 17, 1969, with the cut off date going back to July 1, 1962, the date of the informal policy. They also stated that anyone in an administrative position prior to that date would not be required to move within the territory of the Lansing School District. This is generally referred to as a Grandfather Clause as the rule was not in effect when they received their appointments.

A review of the testimony of the witnesses who opposed this rule indicate that they all had knowledge of such a rule either at the time of their prospective apopintment or very shortly thereafter, except for Leslie Steen, Jr., who was appointed to an administrative post without any knowledge of the residency requirement. The testimony is quite clear that Miss Doersam knew about the informal agreement when she was appointed but it was not discussed because she already was a resident of the Lansing School District. However, without checking out the policy with the Personnel Department, she moved out of the Lansing School District in 1968 even though she had knowledge of the informal policy. Upon notification by letter in 1969 of this requirement she moved back into the Lansing School District.

Mr. Hayes purchased a house which he thought was within the Lansing School District; however, it was not. But he knew about the residency rule requirement before he bought the house. In fact he stated that he would not have purchased the house if he had realized it was not within the Lansing School District. He has since voluntarily agreed to live within the Lansing School District and abide by this rule and is presently doing so.

Mrs. Park was appointed to an administrative position in June of 1969 and was living outside of the Lansing School District. She accepted the job knowing that she would have to live within the Lansing School District and agreed to move into the Lansing School District within one year.

John Silvernale testified that at his appointment in 1968 he lived outside the Lansing School District. He did not have knowledge of the residency rule requirement at

the time of appointment but did shortly thereafter. He might have had knowledge of it prior to the appointment as a result of casual conversation or it might have been after the appointment. He wasn't sure. However, shortly after his appointment, whether a matter of days or weeks, he was called by Mr. Clark and told of the requirement and to either move into the Lansing School District or lose his appointment. He refused to move in and so lost his appointment and continued as a teacher in the Lansing School District.

Catherine Smith was appointed to an administrative job in 1969 and was definitely told that she would have to move into the Lansing School District. She signed a statement that she would move in and then refused to do so after receiving the appointment.

Leslie Steen, Jr. was appointed to an administrative position in 1963 and had no knowledge of a residency rule requirement until he heard about others having to meet this rule early in 1964. He received official notification of the rule in 1969 that he would have to move into the Lansing School District. He is presently living in the Lansing School District.

The testimony of Mr. Clark, Mr. Marrs, Mr. Candoli and Mr. Walsh all indicate that there was an informal Board agreement effective July 1, 1962, and that the administration attempted to enforce it during this period from July 1, 1962, to July 17, 1969. There is no question but that there was general knowledge in the Lansing School District by the testimony of all parties here that they had heard about a residency rule requirement at some time or other and that no one would be appointed to an administrative position unless they moved into the Lansing School District. The reason the Board did not make it official and

part of the minutes in 1962 was because they wanted to give as much time to this classification of employees as possible to comply without undue pressure and economic hardship. This is evident from the testimony where all parties received one year after an appointment within which to move into the School District of Lansing and in fact several were granted extensions of an additional year by the Board. This was obviously done in an attempt to soften the move as much as possible for all appointed administrators.

The factual findings of this Court are as follows:

1. That there was an informal rule requiring all administrators to live within the Lansing School District effective July 1, 1962.
2. That all administrators appointed prior to that date had the election of either moving within the Lansing School District or staying where they were (The Grandfather Clause).
3. That Mr. Clark had a responsibility to promulgate this informal policy of the Board and did so through meetings with the elementary and secondary principals and by making known to prospective adminitstrators that they would have to live within the Lansing School District.
4. That such information was disseminated in private interviews to all prospective administrators except Mr. Steen who lived outside of the District and Miss Doersam who lived inside of the School District at the time of her appointment.
5. All the parties except the two mentioned had knowledge either informally or formally of the residency rule requirement.

6. That the rule was implemented and put into effect on and after July 1, 1962.
7. That the Lansing School District attempted to enforce and follow through with the residency rule requirement in all cases except those qualifying under the Grandfather Clause.

This Court finds as a matter of law that the cut off date July 1, 1962, does bear reasonable relation to the intended purpose of the resident policy rule. That the Lansing School District is a governmental agency run by elected officials. That as a legislative body their determination that all administrative personnel should live within the Lansing School District is a proper one. The rule applies equally to all personnel within the same classification and is not discriminatory or arbitrary in nature. If any one wants to be an administrator in the Lansing School District and qualifies for such an appointment, he may be appointed as such an administrator upon moving into the School District of Lansing or of continuing his residence therein. This Court sees no violation of either the due process or the equal protection clauses of our constitution and agrees completely with the *Williams* case, *supra.*

Accordingly, it is the finding and opinion of this Court that the plaintiffs in this case may retain their position as administrators upon moving within the territorial limits of the Lansing School District. Failure to do this within a reasonable time will permit the Lansing School District to remove them from said administrative positions and place them in other jobs within the School District that do not have such a residency requirement commensurate with their professional background and skills.

An Order may enter in conformity with this opinion and if not done within ten days from the date of this opinion, this opinion becomes the order.

/s/ James T. Kallman,
Circuit Judge.

June 27, 1974.

OPINION OF THE COURT OF APPEALS

(State of Michigan—Court of Appeals—Division 2)

(Filed June 27, 1975)

Harriet Park, John Silvernale, Eleanor Doersam, Leslie Steen, James Kaiser, Catherine G. Smith, Adelaide Converse and J. E. Hayes, Plaintiff-Appellants, vs Lansing School District and Board of Education of Lansing School District, Defendant-Appellees, and Thomas C. Walsh, Intervening Defendant-Appellee.	Docket # 21125

Before: Danhof, P.J., and J. H. Gillis and R. M. Maher, JJ.
Per Curiam

Plaintiffs challenge the legitimacy of Policy Rule No. 4116.5 of the Lansing School District, formally adopted by the Board of Education in July, 1969. The rule requires that administrators live within the district or suffer loss of their administrative positions but creates an exception for those who have held administrative positions since

July 1, 1962 and have lived outside the district continuously since that time. July, 1962 was when the board adopted an informal policy requiring newly hired or promoted administrators to live within the district. When notified in April, 1970, that they would have to move within the district in order to retain their positions, plaintiffs, all of whom were appointed subsequent to July 1, 1962, sought to enjoin enforcement of Rule 4116.5. After dismissal of their complaint, plaintiffs appealed to this Court. We held that the rule did not violate due process, but, because the trial judge did not rule on the equal protection claim presented, we remanded "for factual findings and conclusions of law on the question of whether or not the cut-off date of July 1, 1962 bears some reasonable relation to the intended purpose of the residence policy rule." *Park* v *Lansing Board of Education,* 32 Mich App 752 189 NW2d 60 (1971). On remand, the trial court ruled that there was no violation of equal protection.

Plaintiffs would liken their situation to that presented in *Beauty Built Construction Corp* v *City of Warren,* 375 Mich 229; 134 NW2d 214 (1965), where an ordinance providing for sewer tap fees for buildings constructed after a certain date was invalidated. Since the ordinance deemed the time of construction crucial, and not the time of tap-in, the Supreme Court declared that the date "was certainly not chosen because it formed a reasonable or rational date for establishing a division of a class." 375 Mich at 235. More akin to the situation before us is that found in *Seltzer* v *Sterling Township,* 371 Mich 214; 123 NW2d 722 (1963). *Seltzer* upheld an ordinance that required that all connections to a water system after a certain date be charged a fee, and the court in *Beauty Built* approved this as an instance of a cut-off date that was not arbitrary.

We find Rule 4116.5 to likewise not be so unreasonable or arbitrary so as to constitue a denial of equal protection. The trial court found that since 1962, an overwhelming majority of prospective administrators (all but 2 of a total of 61 hired) were notified of the informal residency rule prior to their appointments. Those hired after July, 1962 knew what was expected of them in terms of residence. The allowance made for a certain few administrators can be explained as coming from a desire to accommodate the interests of those administrators who had established themselves outside the district before the policy of in-district administrators was brought up. It may be true that to include within Rule 4116.5's residency requirements those administrators who now benefit from the grandfather clause would further the intended purpose of the rule. However, plaintiffs must show more than this to be successful in their challenge. They must show that the rule extends a privilege to "an arbitrary or unreasonable class", *Alexander* v *City of Detroit,* 392 Mich 30, 36; 219 NW2d 422 (1974), and that there is no conceivable set of facts than can justify the distinction made in the rule. *Foreman* v *Oakland Co Treas,* 57 Mich App 231; — NW2d — (1975). This has not been done. We are unwilling to say that the rule's cut-off date is wholly without supporting reason.

Affirmed. Costs to defendants.

ORDER DENYING APPLICATION FOR REHEARING

(State of Michigan—Court of Appeals)

(Filed August 11, 1975)

No. 21125 — L. C. #11623-C

At a Session of the Court of Appeals of the State of Michigan, Held at the Court of Appeals in the City of Lansing, on the 11th day of August in the year of our Lord one thousand nine hundred and seventy-five.

Present: The Honorable Robert J. Danhof, Presiding Judge; John Gillis, Richard M. Maher, Judges.

In this cause an application for rehearing has been filed by the plaintiffs-appellants and an answer in opposition thereto having been received, and due consideration thereof being had by the Court,

It Is Ordered that the application for rehearing be, and the same is hereby Denied.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 11th day of August in the year of our Lord one thousand nine hundred and seventy-five.

/s/ Ronald L. Dzierbicki,
Clerk.

ORDER DENYING APPLICATION FOR LEAVE TO APPEAL

(State of Michigan—Supreme Court)

(Filed November 5, 1975)

Harriet Park, John Silvernale, Eleanor Doersam, Leslie Steen, James Kaiser, Catherine G. Smith, Adelaide Converse,
Plaintiff-Appellants,
vs
Lansing School District and Board of Education of Lansing School District,
Defendant-Appellees,
and
Thomas C. Walsh,
Intervening Defendant-Appellee.

No. 57394

At a Session of the Supreme Court of the State of Michigan, Held at the Supreme Court Room, in the City of Lansing, on the 5th day of November in the year of our Lord one thousand nine hundred and seventy-five.

Present: The Honorable Thomas Giles Kavanagh, Chief Justice; John B. Swainson, G. Mennen Williams, Charles L. Levin, Mary S. Coleman, John W. Fitzgerald, Lawrence B. Lindemer, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and the same is hereby Denied, because the appellants have failed to persuade the Court that the question presented should be reviewed by this Court.

The motion for a temporary injunction becomes thereby moot, and the same is accordingly Denied.

Swainson, J., not participating.

State of Michigan—ss.

I, Harold Hoag, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 5th day of November in the year of our Lord one thousand nine hundred and seventy-five.

/s/ Harold Hoag,
Clerk.

Supreme Court, U. S.
FILED
FEB 27 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1098

HARRIET PARK, JOHN SILVERNALE, ELEANOR DOERSAM, LESLIE STEEN, JAMES KAISER, CATHERINE G. SMITH, ADELAIDE CONVERSE and J. E. HAYES,
Petitioners,
v.
LANSING SCHOOL DISTRICT and BOARD OF EDUCATION OF LANSING SCHOOL DISTRICT and THOMAS C. WALSH,
Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

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v.
LANSING SCHOOL DISTRICT and BOARD OF EDUCATION OF LANSING SCHOOL DISTRICT and THOMAS C. WALSH,
Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

Respondents pray that a writ of certiorari be denied to review the judgment of the Court of Appeals of the State of Michigan entered in the above entitled cause June 27, 1975.

CITATIONS TO OPINIONS BELOW

The opinions are adequately set forth in the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

The question is adequately set forth in the petition.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision is adequately set forth in the petition.

STATEMENT OF THE CASE

Respondents submit the following facts in addition to those cited by petitioners to correct omissions.

Thomas Walsh, a member of the Board of Education at the time of the adoption of the informal policy, July 1, 1962, testified that the rationale behind the adoption of the policy was as follows:

> "Well, I was one of probably two men of the seven man board at that time who strongly pushed for action in this regard. It came to the attention of

two other members, two of us that the thing that Dr. Candoli stated much more initially than I, namely that the administrator who tried to provide a leadership role within the school district who lives outside and who is vulnerable to the allegations or comments that at public meetings that for example why should you tell us what millage to vote for or how much we ought to be spending, when you aren't subject to the taxes and your kids go somewhere else. It became clear to some of us that this was a serious impediment to the leadership role, which we came to expect the administrative staff of the school district to play, which required a good relationship with the public. Not simply on millage, but there were eight—more than a hundred administrators to the school district. To most citizens it is the administrators that they happen to lean on to get on to policy questions.

So, as a result in the spring of 1972, there was spirited discussion among the board informally with regard to the then condition, as we stated, that a good number of administrators, including Mr. Clark and others, have comparable living to the staff living outside of the district. I think we adopted the grandfather concept or idea because in fairness, as policy matters, one cannot really say to somebody who in good faith took on the job and bought his house elsewhere and is established there, you can't say if you're going to continue on, you've got to move into the district. We did decide that from that point forward in terms of improving the effectiveness of the administrative staff in their leadership roles to compliment it that we would require a commitment from the prospective administrators that if

they did not then live within the school district that they would do so within a reasonable period of time.

I would have to say to you, Mr. Dunnings, that at that time my colleagues were not particularly anxious to make waves with formal statements of formal policies. This did not appear to require that sort of a public confrontation. We believed then and were proven wrong in future years that a gentleman's agreement between a prospective appointee and the school district would be adequate to serve our needs. Hence, we simply—Mr. Clark's testimony comes at a later point in time that the board's decision, which was in the spring of '62, resulted in the board informally, as I recall I think Mr. Smith saying to the superintendent that this is what we will henceforth do anytime you introduce a candidate for administrative appointment, you shall have a commitment from him that if he's not a resident, he will move in." (T 147-149)*

REASONS FOR DENYING WRIT

It is the position of the respondents that frequently changes in statutory regulations are made so as to take effect after a given date without applying rigorously to previously established conditions. *Williams* v *Walsh,* 222 US 415, 56 L Ed 353 (1911).

When the informal policy was initially adopted July 1, 1962, those administrators already employed in such capacity were permitted to remain outside the district. Con-

* Reference designed "T" refer to pages in the transcript of testimony.

tracts with those administrators had already been fully executed. Hence, a law which operates alike on all persons similarly situated is not necessarily invalid because it excepts from its operation all instances in which contract rights had been acquired prior to its adoption. *Williams* v *Walsh, supra.*

Mere laxity in the administration of a policy, no matter how long continued, is not and cannot be held to be a denial of the equal protection of the law. *Sims* v *Cunningham,* 203 Va 347, 124 SE 2d 221, cert den 371 US 840, 9 L Ed 2d 76 (1962).

The Lansing School District attempted to work out a solution in adopting the initial residency requirement so as to bring about implementation without a great deal of difficulty. Rough accommodations made by government in solving its problems do not violate the equal protection clause of the Fourteenth Amendment unless the lines drawn are hostile or invidious. *Norvel* v *Illinois,* 373 US 420, 10 L Ed 2d 456 (1963), rev den 375 US 870, 11 L Ed 2d 99.

The initial policy adopted July 1, 1962 required all administrators living within the school district to remain within the school district and only excepted those who were not residing within the district at the time. The classification created by the policy was not based upon existing circumstances only, but included all those who may thereafter be in similar circumstances and conditions.

This court has held that "normally, the widest discretion is allowed the legislative judgment in determing whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." *McLaughlin* v *Florida,* 379 US 184, 191, 13 L Ed 222, 228 (1964).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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